PAGE

ARGUMENT

TABLE OF AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 73-1723

JOHN L. HILL,
ATTORNEY GENERAL OF TEXAS,
Appellant

V.

MICHAEL L. STONE, ET AL.,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

PETITION FOR REHEARING

Pursuant to Section 1 of Rule 58 of this Court, Petitioner, The Attorney General of Texas, respectfully prays for a rehearing of the decision and judgment of this Court insofar as it declares the Texas

property rendition requirement for voting in a tax bond election to be unconstitutional.

Petitioner urges three points as grounds for rehearing:

1.

THE SUPREME COURT ERRED IN HOLDING THAT THE EVIDENCE PRESENTED SUPPORTED A FINDING THAT THE TEXAS PROPERTY RENDITION REQUIREMENT FOR VOTING IN TAX BOND ELECTIONS, AS CONSTRUED BY THE SUPREME COURT OF TEXAS, IMPERMISSIBLY DISENFRANCHISES AN IDENTIFIABLE CLASS OF PERSONS.

It is a well settled proposition of law that the construction given state constitutions and statutes by the highest courts of the state is binding on federal courts. Albertson v. Millard, 345 U.S. 242 (1953); Skaug v. Sheehy, 157 F. 2d 714 (9th Cir. 1946). Although this proposition does not bind the federal courts in interpreting and applying federal law to a challenged state law, the federal courts should give great weight to state court interpretations in terms of whether or not those state laws, as interpreted and applied, will indeed contravene some tenet of federal law. The Supreme Court of Texas in Montgomery Independent School District v. Martin, 464 S.W. 2d 638 (Tex. Sup. 1971), construed the Texas rendition requirement to be no impediment to the exercise of the franchise at all.

As construed, a prospective voter need only render some item of property whether he actually pays a tax on it or not. In the past, this Court has applied a test of strict scrutiny only when voting qualifications reflect a substantial adverse impact on the exercise of the franchise. McDonald v. Board of Election Commissioners of Chicago, 394 U.S. 802, 807-808 (1969); Kramer v. Union Free School District No. 15, 395 U.S. 621, 626-627 n. 6 (1969). Nowhere in the record before this Court has an adverse impact, real or imagined, been demonstrated to exist in the application of the Texas rendering requirement. Not one person otherwise qualified to vote has been presented to this Court as unable to meet the rendering requirement with a minimum of effort, an effort already required by other provisions of Texas taxation laws. All that was before this Court were two groups of appellees: one group which rendered property for taxation therefore meeting the voting qualification, and another group which, for their own reasons, determined to shirk their burden of citizenship by not rendering, yet demand participation in a process designed to impose a tax on others. This Court has determined that since the minimal state requirement imposes no real burden on the franchise, then no valid state policy is served. This Court is obviously puzzled by a voluntary self-assessment taxing system. The concept that citizenship can mean more than being coerced into bearing the burdens of free government still survives on the frontier of Texas. This concept of citizenship as applied in Texas demands only that a citizen who desires to authorize a particular tax-bond supported capital improvement be willing to contribute to the debt he

thereby creates. The State of Texas, of course, realizes that there are those members of society who regularly shirk the duties and burdens of citizenship unless coerced into compliance. Those who would vote to impose a tax on others with no corresponding burden on themselves do not seem to be exactly deserving of the privilege of the ballot. The Texas laws, however, chastize only those who choose to render nothing. Therefore, this Court should reconsider its decision that the Texas laws, as construed by the Texas Supreme Court, are unconstitutional.

II.

THE SUPREME COURT ERRED IN HOLDING THAT THE EVIDENCE PRESENTED SUPPORTED A FINDING THAT THE TEXAS PROPERTY RENDITION REQUIREMENT FOR VOTING IN TAX BOND ELECTIONS IS SUBJECT TO A STANDARD OF CLOSE SCRUTINY, AND THEREFORE UNCONSTITUTIONAL, AS IMPOSING AN IMPERMISSIBLE BURDEN BEYOND THE REQUIREMENT OF REGISTRATION.

Since close scrutiny by this Court only follows a determination that a real and appreciable restriction on the exercise of the franchise exists, the Texas rendition laws are no more subject to close scrutiny than the registration requirement upheld in Rosario v. Rockefeller, 410 U.S. 752 (1973). There a registration condition, required by law, was upheld since no class of potential voters was

totally denied the ballot with no way in which to make themselves eligible to vote. In Texas there is a registration requirement, required by law, and a property rendition qualification, required by another law. At the polls in Texas the only additional procedure involved is signing an affidavit to the effect that property has been rendered. It is difficult to understand how the combination of two Texas laws which lead to disenfranchisement only by way of self-disenfranchisement can be considered to be more restrictive than a registration requirement standing alone. Again, there has been no demonstration to this Court that a single person was unable to qualify to vote because of the rendition requirement and, in view of Texas law as construed in Montgomery Independent School District v. Martin, supra, it is doubtful such a showing could be made. This Court should reconsider the basis for its conclusion that the Texas laws are unconstitutional.

III.

THE SUPREME COURT ERRED IN HOLDING THAT THE EVIDENCE PRESENTED SUPPORTED A FINDING THAT THE TEXAS PROPERTY RENDITION REQUIREMENT FOR VOTING IN TAX BOND ELECTIONS IS SUBJECT TO A STANDARD OF CLOSE SCRUTINY, AND THEREFORE UNCONSTITUTIONAL, AS IMPOSING AN IMPERMISSIBLE BURDEN BEYOND THE REQUIREMENT OF RESIDENCY.

If non-renderers are as sufficiently affected by

and directly interested as renderers in tax-supported bond elections, then the requirement of residency also seems rather suspect.

The non-renderers are no more affected and interested in the library tax-bond election than the non-residents were in the City of Tucson municipal water revenue bond election involved in Kollar v. Tucson, 319 F.Supp. 482 (D. Ariz. 1970), aff'd., 402 U.S. 967 (1971). Both groups obviously have some general interest in the particular capital improvement involved because all people could use the libraries and benefit from an improved water system. Nevertheless, both groups demand the privilege of voting "without accepting the burdens". Kollar v. Tucson, supra. Indeed, in Kollar it would appear that the non-resident's water rates could be significantly affected by the generation of the additional revenues needed to retire the water revenue bonds the authorization of which they were prohibited from voting on.

What legal principal entitles a resident non-renderer to vote on property tax supported library bonds which will present him with no corresponding burden, yet prohibits a non-resident contract rate-payer for water services from voting on water revenue bonds directly affecting the rate he will pay for water services in the same manner as a resident rate-payer?

The District Court in Kollar suggested that a significant difference lies in the fact that the City of Tucson had no obligation to provide non-residents with water nor could non-residents compel such

service. But the City of Tucson was required to provide equal and adequate service for its residents. Fort Worth already has a library system and, whether Fort Worth had a library system or not, it is highly doubtful that anyone could compel the City to build one with bond funds since the sole function of a bond election in Texas is to authorize the issuance of bonds.

The District Court in Kollar concluded by finding the qualifications of residency in those circumstances to be compelling since residents had a "generally greater stake" in local elections and there was a general need to define the electorate. However, the court also concluded that "To allow the municipal franchise to all persons with a pecuniary interest would not permit of a manageable standard or adequately define a cohesive interested group of electors."

The majority of this Court, slip. op., p. 9, states that ". . .the construction of a library is not likely to be of special interest to a particular, well-defined portion of the electorate." That conclusion, although obviously correct, ignores the true effect of a tax-bond election in Texas. The city officials merely seek authorization to issue tax bonds to build a library. They could just as easily build it with other revenues available to the city. Non-residents and non-renderers certainly lack the direct interest of the renderers in Fort Worth because although the question of whether or not the library bonds are ever issued is one over which the city officials alone have control, the question of whether or not a property tax may be authorized for

such purpose is decided by the bond election. Such an election is not one of "general interest" but one of "special interest" to those called upon to place a voluntary tax lien on their property. Therefore, the real question submitted in a Texas tax bond election is not whether a particular capital improvement will be made, but whether a particular capital improvement to be constructed with tax bonds will be authorized. The difference is one of substance, not semantics, for those who will be called upon to pay the debt authorized at the election.

Toward recognizing this difference, the Texas laws attempt to adequately define the cohesive, interested group of electors who will bear the direct and substantial burden to be authorized at a tax bond election. This reasonable qualification for voting in such an election certainly seems more tangible, under the circumstances, than a general residency requirement and therefore this Court should reconsider the basis for its decision that the Texas laws are unconstitutional.

WHEREFORE, premises considered, Petitioner moves the Court to grant the rehearing prayed for.

Respectfully submitted,

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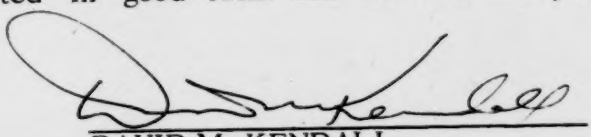
CERTIFICATE OF COUNSEL

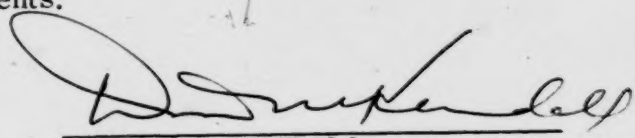
I certify that the within Petition for Rehearing is presented in good faith and not for delay.



DAVID M. KENDALL
First Assistant Attorney General

CERTIFICATE OF SERVICE

This is to certify that on the 5th day of June, 1975, copies of this Petition for Rehearing were mailed, postage prepaid to counsel of record for the Respondents.



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